

**Before the
Federal Communications Commission**

In the Matter of the)
)
Appeal of the Decision of the)
)
Universal Service Administrator by)
the) **02-6**
)
Windber Area School District)

**Appeal
Expedited Relief Request**

August 10, 2010

(1) Funding Commitment Decision Letter Appealed

Form 471 Application Number: 762951
Funding Year 13: 07/01/2010-06/30/2011
BEN: 125450
Date of Funding Denial Notice: June 29, 2010
Date of Appeal: August 10, 2010

(2) Appeal Contact Information

Nathaniel Hawthorne, Attorney
Ste 265
27600 Chagrin Blvd.
Cleveland Ohio 44122-4449
Tel. (216) 514-4798
Fax. (216) 472-8184

(3) Funding Request Number Appealed

2061214

(4) Administrator's Reason for Denial

Funding is denied because:

"30% or more of this FRN includes a request for ALERTNOW which is an ineligible product(s)/service(s) based on program rules."

(5) Law and Argument

A. ALERTNOW is a communication system that is allowable because it uses either web-based service (e-mail), landline phones, or cell phones for

security purposes.¹ Telecommunications/Internet Access for security purposes, with a security message,² is allowable. *Id.*

Student security and safety is always an important aspect of delivering education to the classroom. "Educators should concentrate on violence-prevention strategies that are child-focused and support learning. We must balance building security with efforts to foster student resiliency, connectedness, and social competence. The core principles of such a plan are the same as those underlying sound educational policies and practices that address the quality of the learning environment and the needs of the whole child. *** Central to this effort is helping students and their families feel valued and personally invested in keeping their school safe." *From Education Week Vol. 26, Issue 14, Pages 30-31, Published: December 6, 2006, COMMENTARY School Safety: A Learning Matter By Cathy Paine [Emphases added.]*<http://www.nasponline.org/press/EdWeekDec2006.pdf>

¹ Any authorized administrator, such as school principals or communications officers, can record and send a message with one phone call or by using a secure, password-protected Internet site. http://www.alertnow.com/03_01.html

² It is unknown whether the Administrator is objecting to the telecommunications/Internet platforms or to the message that us transmitted over those platforms.

Security is essential “[t]o create respectful school environments and ensure the right to education for all students***”

<http://www.nyclu.org/schooltoprison/ssa>

For comparison purposes, ALERTNOW is similar if not identical to paging service³ for security purposes is eligible for discount. Again, by way of comparison, “paging services are eligible when integral, immediate, and proximate to the education of students. Services occurring at eligible locations are presumed to meet this standard, as well as, for example, paging services used by a bus driver delivering students to school, a library staff member in a mobile van, and teachers on field trips.” [Emphases added] http://www.e-ratecentral.com/FCC/eslArchive/ESL_2010.pdf.

The Joint Board stated “[g]iven the varying needs and preferences of different schools and libraries and the relative advantages and disadvantages of different technologies, we agree with the Joint Board that individual schools and libraries are in the best position to evaluate the relative costs and benefits of different services and technologies.” *Recom Dec, 12 FCC Rcd at 322-23.*

B. From a regulatory/ USF perspective ALERTNOW is provided over a telecommunications or internet access vehicle. Ignored is the fact that

³ Paging service defined at:
http://wireless.fcc.gov/services/index.htm?job=service_home&id=paging

telecommunications for security is allowable where provided over a telecommunications vehicle, e.g., paging service.

C. Telecommunications, Internet access and cell service are Priority One services. ALERTNOW fits into the Internet access and cell service categories.

D. *The Joint Explanatory Statement of the Committee of the Conference* makes it clear that "the ability of K-12 classrooms*** to obtain access to advanced telecommunications services is critical." *Conference Report 104-230, 104th Congress 2d Session, February 1, 1996, page 113.*

Further, the Bishop Perry offers guidance here. The Bishop Perry Order states, in relevant part:

*** rigid compliance with USAC's application procedures does not further the purposes of section 254(h) or serve the public interest.⁴ We therefore grant these appeals and remand them to USAC for further processing consistent with this Order. *FCC 06-54, Bishop Perry Middle School, Released: May 19, 2006*

E. *The Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, Sec (6) of 254 states, in relevant part, that Elementary and Secondary schools and classrooms should have access to advanced telecommunications services***; and Sec(7) states that the Commission shall take into account advances in telecommunications and information technologies and services.

⁴ See 47 U.S.C. § 254(h)

This Commission has stated "Congress imposed no limits whatsoever on the telecommunications services for which eligible schools and libraries could arrange to receive discounts. We see no reason for limiting the nature of the telecommunications services that are covered under section 254(h)(1)(B) or the role they play in the operations of the institution. Eligible schools and libraries are equally free to obtain support under section 254(h)(1)(B) for plain old telephone service (POTS) lines to enable teachers to receive calls in the classroom, ISDN services that connect classroom and library computers with information services, private lines for connecting two school libraries to each other, or paging services to enable school security officials promptly to respond to hallway disturbances." *FCC 97-157 Report and Order RCC Docket No. 96-45 Rel.: May 8, 1997*

"Paging is a service designed to deliver a message to a person whose exact location is unknown. The service employs selective radio signals that activate a paging receiver carried by the intended recipient to deliver a text, or voice message. Paging service is eligible for discount when provided for use at a place of instruction and for educational purposes or for use by security personnel. The service is not eligible when provided for uses other than instruction or security." http://www.e-ratecentral.com/FCC/eslArchive/ESL_2000_1116.pdf Security is security. A bus driver or security personnel with paging service with the ability to notify educational authorities in an emergency situation is no different than

educational authorities notifying parents in an emergency situation. Both have a need to know and Priority One services are the vehicle. Safety is safety.

F. ALERTNOW is to "ensure campus safety" and that is directly related to delivering education to the classroom.

http://www.alertnow.com/01_01.html Similarly, paging service is used to enable "school security officials promptly to respond to hallway disturbances." *FCC 97-157 Report and Order RCC Docket No. 96-45 Rel: May 8, 1997; and security.* http://www.e-ratecentral.com/FCC/eslArchive/ESL_2000_1116.pdf ALERTNOW uses e-mail or landline telecommunications, by school personnel, for security purposes http://www.e-ratecentral.com/FCC/eslArchive/ESL_2000_1116.pdf

USAC's denial was unreasonable and unlawful, contrary to the rules and regulations of the Federal Communications Commission, and the Telecommunications Act of 1996.

Conclusion:

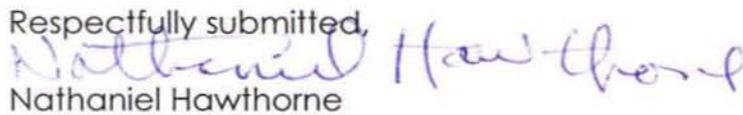
Windber is Requesting the following action by the FCC:

- (a) Issue a ruling that ALERTNOW is eligible for USF support;

(b) Within 90 days or less Order funding for the telecommunications/Internet Access services requested in the 471 Application, specifically FRN: 2044562

(c) Set aside funds to totally fund Windber Area School District's request.

Respectfully submitted,



Nathaniel Hawthorne

District of Columbia Bar No. : 237693
27600 Chagrin Blvd., Ste. 265
Cleveland, OH 44122
tel.: 216/514.4798
e-mail: nhawthorne@telecomlawyer.com

Attorney for Windber Area School District
Cc: Windber Area School District



765.0526

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